



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 1, 2012

CBCA 2833-RELO

In the Matter of JAMES E. MOYER

James E. Moyer, Eaton, OH, Claimant.

Crystal L. Moore, Chief, Operations & Support Branch, Civilian Force Development and Renewal Division, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

BORWICK, Board Judge.

Claimant, an employee of the Department of the Army (Army), seeks financial restitution from his old employing agency, the Department of the Air Force (Air Force or agency), relating to his permanent change of station (PCS) from Wright-Patterson Air Force Base (AFB), Ohio, to Robins AFB, Georgia, and the alleged failure of the agency to complete claimant's participation in the guaranteed home sale (GHS) program. We deny the claim, as the agency properly administered the GHS program in claimant's case.

Claimant also submitted a claim to the Air Force for excess household goods (HHG) storage charges in connection with his PCS from the Air Force to the Army. Claimant, however, did not submit a claim to the Army for those excess charges. Since the Army is the responsible agency, we dismiss the excess storage charge portion of the claim to enable claimant to submit a claim for excess storage charges to the Army. Claimant may file a new case here if he is dissatisfied with the Army's determination.

Background

The real estate transaction claim

On May 23, 2005, claimant was transferred in the interest of the Government from the Air Force Institute of Technology, Wright-Patterson AFB, Ohio, to Robins AFB, Georgia, with a duty reporting date of May 29, 2005. On August 11, 2005, claimant applied for, and was accepted into, the GHS program, which is a component of the Department of Defense National Relocation Program (DNRP). On September 5, 2005, claimant entered the DNRP. According to records of the DNRP realtor, Prudential Financial (Prudential), on November 23, 2005, the realtor offered claimant \$77,000 for the purchase of his house, and the offer was rejected on July 18, 2006. The Government incurred costs of \$2315 billed by Prudential for the services it had rendered for claimant.

As to that event, claimant states that:

In working through [Prudential], they informed me that they would work with the mortgage lender to negotiate a short sale proceeding but failed to complete the process. After reading the agency's response, at no time did I decline the offer from Prudential but they failed to complete the process thereby denying me the DNRP program.

Regulation required claimant to sell his house within two years of the date on which he began his new position at Robins AFB, with a two-year extension being available. JTR C14000-B. According to the agency, claimant did not seek an extension of the two-year time limitation. If an extension had been sought, claimant's four-year deadline for selling his house would have been May 29, 2009.

The Department of Defense handbook provides that an employee may reject a GHS offer at any time and proceed to sell the home independently. However, if the employee rejects a GHS offer, no further home sale services shall be performed by the relocation contractor and the home will no longer be eligible for inclusion in the GHS program unless a waiver has been granted by the agency and the employee repaid to the Government the incurred costs for the initial service.¹

¹ See <http://www.nab.usace.army.mil/DNRP/DNR Pv311.pdf>, ¶ VIIE.

The handbook also provides that if the offer is for less than the employee's mortgage balance and the employee accepts the offer, the employee will be required to pay the DoD relocation contractor the difference between the offer and the mortgage balance, with the funds being due upon the acceptance of the offer.² The handbook states that the employee is responsible for ensuring that the property is in "financeable" condition.³

As to the relocation expense claim, claimant seeks "financial restitution" against the agency for \$85,417.26, consisting of \$74,000 (the appraised property value of his Ohio residence), plus \$11,417.26 (the cost of repairs due to renters' damage to the property).

The HHG excess storage fee claim

On June 25, 2009, claimant transferred to Huntsville, Alabama, to assume a position with the Army, and moved from Robins AFB. The agency granted claimant ninety days of temporary storage of HHG. Claimant incurred excess storage charges of \$711.45 and is seeking reimbursement for those charges. Claimant, however, submitted a claim to the Department of the Air Force, not the Department of the Army and did not receive a decision on his HHG claim from the Air Force.

Discussion

The real estate transaction claim

The agency properly administered the GHS program in claimant's case. The agency accepted claimant into the GHS program and retained a relocation services contractor, and the contractor made claimant an offer, which he refused. At that time, claimant's eligibility to remain in the GHS program expired, unless claimant repaid the Government the cost of the contractor's services and a waiver was granted by the agency, neither of which occurred in this case. Claimant expected the contractor to solve whatever mortgage problems were associated with the sale of his house, but, as the agency manual makes clear, such financial issues are the employee's responsibility. Furthermore, as of May 29, 2009, claimant's eligibility for any real estate transaction expenses expired. JTR C14000-B.

²*Id.*, ¶ XIIIB3.

³ *Id.*, ¶ IID.

The HHG excess storage charges claim

Although the Air Force has provided information on the circumstances of the movement of HHG, Board Rule 401(c) provides:

Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim.

48 CFR 6104.401(c). Claimant's agency for the excess storage charge portion of the claim is the Department of the Army, not the Air Force. Claimant must first submit a claim for excess storage charges to the Army and obtain an adjudication from that department before proceeding here. Claimant may file a new case at the Board regarding excess storage charges if he is dissatisfied with the Army's determination.

Decision

The Board denies the real estate transaction portion of the claim and dismisses the excess storage charge portion of the claim.

ANTHONY S. BORWICK
Board Judge